

REMARKS

Amendment to the specification has been made to correct for a typographical error.

In response to the Examiner's rejection of claims 11 and 14-16 under 35 USC 112, second paragraph, the Applicant has amended claim 11 to remove the twice recited "side rails". The Applicant submits that this amendment overcomes the Examiner's rejection under 35 USC 112, second paragraph.

In addition, claims 1, 10 and 16 have been cancelled and independent claims 4 and 11 have been amended to incorporate the lobed bottom feature of the notches at which facilitate assembly of the knock down sawhorse. No new matter has been added inasmuch as this subject matter was previously the subject of dependent claims 10 and 16.

The cancellation of claim 1 renders moot the Examiner's rejection thereof under 35 USC 103(a).

Claims 4, 6, 10, 11, and 16 have been rejected by the Examiner under 35 USC 103(a) as being unpatentable over U.S. 3,035,660 to Leon and either U.S. 1,612,941 to Peachee, U.S. 4,923,051 to Newville, and U.S. D306,349 to Logan, and further in view of U.S. 4,943,035 to Thomson, et al.

In this rejection, the Examiner stated that Leon shows the claimed sawhorse with the exception of the side rails and holes, Peachee shows side rails, Newville shows side rails, and Logan shows a sawhorse in a stored condition. Further, the Examiner relies on Thomson for showing a handle which is capable of being used as a handle for a sawhorse.

However, none of these references teach, suggest, or even hint of the lobe bottom structure of the notches in accordance with the present invention which facilitate assembly of the knock down sawhorse.

The Examiner “takes official notice” that notches with lobed bottoms to facilitate assembly is conventional and concludes it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the notches of Leon to comprise lobed bottoms in view of the conventional teaching to facilitate assembly.

In response thereto, the Applicant respectfully traverse the Examiner’s rejection on the basis that no structure is taught or suggested by the references cited by the Examiner with regard to the lobed bottoms.

Accordingly, the Examiner’s conclusion that “it would have been obvious to one of ordinary skill in the art” is an unsupported opinion. It has been held by the decision in *In re Warner and Warner*, 154 USPQ 173 (CCPA 1967) that “it is the Examiner’s duty to provide a factual basis for any rejection under 35 USC 103”. The opinions set forth on page 3 of the Office Action mailed March 24, 2006 does not qualify as facts and therefore cannot be properly used to support a claim rejection.

As enunciated by the CCPA in *In re Warner and Warner*:

A rejection based on 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight construction of the invention with the prior art...the patent office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions, or hindsight to supply the deficiencies in its factual basis” See also *In re Freed*, 165 USPQ 570 (CCPA 1970).

Not only has the Examiner failed to produce any objective evidence to support the conclusion that one having ordinary skill in the art would provide notches with lobes to facilitate assembly, but the Examiner has also failed to offer any rational technical explanation in support of the conclusion. At such, technical support is required. *Ex parte Chopra*, 229 USPQ 230 (Patent and Trademark Board of Patent Appeals and Interferences 1985).

Based upon the present amendment to the claims and the hereinabove presented arguments, the Applicant submits that the invention, as presently claimed, is not obvious and is, therefore, patentable over the references cited.

Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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